

REMARKS

It is respectfully submitted that the status of the Office Action mailed October 4, 2007 as "final" is improper and should be withdrawn. The Office Action states in the sentence bridging pages 2 and 3 that the claims "will be examined based on the assumption that...the lever has a hole for receiving the post and pivots about an end of the post." The claims, however, are clearly directed to the embodiment shown in Figures 5 and 6 and not that in Figure 4. The claims explicitly recite that the lever does not containing a hole, and it is improper for the Examiner to ignore that limitation in order to examine the claims as if they contain a limitation which they do not have. It is, of course, proper for the Examiner to reject the claims on the basis of § 112, but for the purposes of § 103, the Examiner must examine the claims presented. The Office has no discretion to examine the claims as if they were something other than what they are.

Because the Examiner had no discretion to change claims and then examine the changed claims, and that is what has been done, the claims on file have not had the full and complete examination which they are entitled to under Title 35. Since the claims were not examined, it was improper to make the rejection "final". Withdrawal of the final status of the Office Action is respectfully solicited.

It is respectfully submitted that the rejection under 35 U.S.C. 112, first paragraph, should be withdrawn. The Office Action states that the original disclosure does not teach that the clipper of Figure 5 can be operated with the lever 118 lacking a hole through which post 117 in Figure 4 extends. It is respectfully submitted that the original disclosure does so teach when the text is considered in conjunction with Figures 5 and 6. Figure 4 is stated on page 2 to relate to a first embodiment of the nail

clipper. Figures 5 and 6 are stated on pages 3 and 4 to describe a second embodiment. Figure 6 is indicated to be a top view which means it is looking down at the lever. There is clearly no hole in that lever.

The Office Action questions how the nail clipper can function without blocking the pivoting motion of the lever and thus blocking the movement of the cutting edge, making reference to a sketch on page 3. That question and the sketch assume, incorrectly, that the post is located within the space defined by the width of the top surface and in blocking relationship with the lever. It is very clear from Figure 5 that the post 117 is not in a blocking relationship with top surface 101. Post 117 blocks the view of the top member which can be seen emerging on either side of the post, and establishing that the post is not disposed within the width of the top member. Figure 5 also shows that the post is coupled to the lever on its outside so that the lever can operate to cause the top and bottom cutting surfaces to abut.

While it is believed that the application, when read in light of the drawing Figures 5 and 6, clearly satisfies the written description requirement, an additional paragraph has been added to the application. All of the text in this application is fully supported by the drawings and the figures and does not involve any new matter. Also, for increased clarity, the claims have been amended to state that the lever is disposed and adapted to cause movement of the cutting edges, and the interconnection recitation deleted to avoid any implication that the post is fixed to the top surface.

In light of the foregoing it is respectfully submitted that the § 112 rejection should be withdrawn.

The rejection of the claims as presented, under 35 U.S.C. 103 over Litton in view of Fink or over Tsay in view of Litton and Fink is respectfully traversed.

The reasons that these rejections are not tenable was stated in the amendment filed August 1, 2007, but those statements have been explicitly ignored in this Office Action. They are incorporated in this response by reference.

In summary, none of these references, considered alone or in combination, teach or suggest, *inter alia*, the feature of the devise where the post extends adjacent the surface of a side surface of a top elongated member to a point above the top surface of the top elongated member. In the invention claimed, the post is adjacent to a side surface of the top elongated member, i.e., it is disposed outwardly of that surface.

It is respectfully submitted that this application is in condition to be allowed.

Dated: October 18, 2007

Respectfully submitted,

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